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8. Costs (§ 231*)—Allowance of Costs—Appeal.—Where, on defendant's appeal, plaintiff's recovery was reduced from more than \$10,000 to less than \$1,000, defendant is the party substantially prevailing and is entitled to costs.

[Ed. Note.—For other cases, see Costs, Cent. Dig. §§ 847, 852, 853, 855, 872-875; Dec. Dig. § 231.* 3 Va.-W. Va. Enc. Dig. 623.]

Appeal from Circuit Court, Bath County.

Bill by Joseph T. McAllister against Mrs. Alva E. Belmont, from a decree for complainant, defendant appeals. Reversed.

Munford, Hunton, Williams & Anderson, of Richmond, for appellant.

Harmon & Walsh, of Charlottesville, and *A. W. Patterson*, of Richmond, for appellee.

STEPHEN PUTNEY SHOE CO. *v.* RICHMOND, F. & P. R. CO.

March 12, 1914.

[81 S. E. 93.]

1. Easements (§ 51*)—Deed—Construction—Evidence.—A deed, construed in view of evidence as to surrounding circumstances, held to give the grantee the right to an adjoining strip of land as an open space, not only for ingress and egress, but for any reasonable purpose, such as light, air, and view, without interference by a subsequent grantee thereof.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 109-112; Dec. Dig. § 51.* 4 Va.-W. Va. Enc. Dig. 855.]

2. Easements (§ 42*)—Grant or Reservation—Construction of Deed.—Ordinarily, where an easement is granted or reserved by deed, the rights of the parties must be ascertained from its words, and the extent of the easement cannot be determined from any other source; but in case of ambiguity the court looks to circumstances surrounding the parties and the land to ascertain their intent.

[Ed. Note.—For other cases, see Easements, Cent. Dig. § 97; Dec. Dig. § 42.* 4 Va.-W. Va. Enc. Dig. 855.]

3. Deeds (§ 99*)—Construction—Consideration of Executory Contract.—A grantee of a strip of land, an easement in which the grantor previously granted to a third party by a deed of adjoining land, acquired only such right, title, and interest as the grantor had therein; and failure to record the executory contract for the deed to such party does not prevent consideration of the contract in construing the deed as to the easement.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 261-265; Dec. Dig. § 99.* 4 Va.-W. Va. Enc. Dig. 855.]

4. Deeds (§ 99*)—Construction—Provisions Differing from Con-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

tract.—If a provision in a deed differing materially from the executory contract therefor resulted from a change in intention of the parties, it must be presumed that the language was deliberately chosen, and it calls for application of the rule that every part of a contract must be made to take effect, and every word operate in some way, if possible.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 261-265; Dec. Dig. § 99.* 4 Va.-W. Va. Enc. Dig. 422.]

5. Deeds (§ 99*)—Construction—Provisions Differing from Contract.—If a provision in a deed in lieu of that in the executory contract therefor was not the result of agreement between the parties, it must be treated as the language of grantors, and construed most strongly against them, and as intending to grant all that the language employed was capable of passing to grantee.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 261-265; Dec. Dig. § 99.* 4 Va.-W. Va. Enc. Dig. 420.]

6. Deeds (§ 99*)—Deed as Merging Prior Negotiations.—All prior negotiations between the parties are merged in a deed, and though its provisions differ from the executory contract therefor, as to an easement granted therein, the deed determines the rights of the parties respecting it, and the grantee only acquires such rights and privileges as are granted thereby.

[Ed. Note.—For other cases, see Easements, Cent. Dig. § 97; Dec. Dig. § 99.* 4 Va.-W. Va. Enc. Dig. 420.]

7. Evidence (§ 461*)—Parol—Deeds—Intent of Parties.—If language of a deed is clear as to the rights and privileges granted therein, there is no necessity or right to consider anything aliunde, to ascertain the intent; but it is otherwise when it is ambiguous.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 2129-2133; Dec. Dig. § 461.* 5 Va.-W. Va. Enc. Dig. 303; 4 Va.-W. Va. Enc. Dig. 364.]

8. Deeds (§ 114*)—Construction—General and Specific Words.—The meaning of general words will not be restricted by more specific or particular description which follows, if it renders them mere surplusage, or meaningless.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 316-322, 326-329, 388; Dec. Dig. § 114.* 4 Va.-W. Va. Enc. Dig. 426.]

9. Deeds (§ 114*)—Construction—Ejusdem Generis.—The rule that, when particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class, applies mostly where the general words follow the particular, and not where the particular words follow the general.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 316-322, 326-329, 388; Dec. Dig. § 114.* 4 Va.-W. Va. Enc. Dig. 426.]

10. Deeds (§ 95*)—Construction—Ejusdem Generis.—While it is

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aimed, by the rule of ejusdem generis as to the construction of general and particular words, to preserve a meaning for the latter, it is not intended to render meaningless the general words; and so, when the particular words exhaust the class, the general words must be construed as embracing something outside of that class.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 238, 241-254; Dec. Dig. § 95.* 4 Va.-W. Va. Enc. Dig. 426.]

11. Deeds (§ 114*)—Construction—Ejusdem Generis.—When particular descriptions precede general descriptions in a deed, the former will not restrict the latter, if they are used in the sense of reiteration or affirmation.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 316-322, 326-329, 338; Dec. Dig. § 114.* 4 Va.-W. Va. Enc. Dig. 426.]

12. Easements (§ 50*)—Deed—Construction.—A deed giving the free use of an adjoining strip of land as an open space did not entitle the grantee to inclose the same or any part thereof.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 109-112; Dec. Dig. § 50.* 4 Va.-W. Va. Enc. Dig. 855.]

13. Railroads (§ 73*)—Deed—Construction—Location of Track.—Where a grantor covenanted for use by grantee of a strip on its adjoining land, to be selected and designated by the parties, for two railroad tracks, and to construct one or two tracks for grantee's use when called for, from a railroad to the land conveyed, and after the grantor conveyed the servient estate to the railroad tracks were built and accepted in lieu of tracks covenanted for in the deed, pursuant to an agreement providing that on its termination by a notice, which was given, the grantee should be remitted to all of its rights under the deed, the railroad then had the right to select and designate placing of its tracks, and to serve other patrons over existing tracks as long as they remained, and grantee should pay for grading and equipment.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 179-182; Dec. Dig. § 73.* 11 Va.-W. Va. Enc. Dig. 544.]

Appeal from Circuit Court, Henrico County.

Suit by the Stephen Putney Shoe Company against the Richmond, Fredericksburg & Potomac Railroad Company. From the decree, the former appeals. Affirmed in part, and reversed in part.

A. G. Collins and *S. A. Anderson*, both of Richmond, for appellant.

John S. Eggleston, of Richmond, for appellee.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.